IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

FAO.No. 340 of 2007()

AS.329/2006 of III ADDL. DISTRICT COURT, KOLLAM
OS.1035/1999 of PRL.M.C., KOLLAM
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APPELLANTS/DEFENDANTS:
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1. K.VIJAYAMOHAN, AGED 48, PALLIPURATHU VEEDU, VADAKKEVILA CHERRY, VADAKKEVILA VILLAGE.

2. KASTHURIBAI, AGED 53, W/O.SUDHARSAN, PALLIPURATHU VEEDU, VADAKKEVILA CHERRY, VADAKKEVILA VILLAGE.

3. LALI, AGED 44, NALLAMUTTATH, MEENATH CHERRY, SAKTHIKULANGARA VILLAGE.

BY ADV. SRI.P.B.SURESH KUMAR

RESPONDENTS: RESPONDENTS/PLAINTIFFS:
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1. SAKARIA, AGED 73, S/O.SIMON, MANNATHAZHATHU VEEDU, MEENATH CHERRY, SAKTHIKULANGARA VILLAGE.

2. SANTHOSH KUMAR, AGED 38, S/O.NARAYANA PILLAI, KAMMIKKATH KIZHAKKATHIL, SAKTHIKULANGARA VILLAGE.

BY

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

F.A.O.No.340 of 2007

Dated this the 5th December, 2007.

J U D G M E N T

The defendants in O.S.No.1035/1999, on the file of the Principal Munsiff's Court, Kollam, are the appellants in this appeal. Respondents filed the suit for mandatory injunction. They wanted the appellants to remove a gate put up by the appellant. The trial court decreed the suit and directed the appellants to remove the gate put up on the southern side of C schedule way, within six months. Challenging that decree, the appellants filed A.S.No.329/2006 before the District Court, Kollam. The appellate court allowed the appeal setting aside the judgment and decree of the trial court, and remanded the case back to trial court to consider the issues afresh based on the evidence. It also gave an opportunity to plaintiffs to amend the plaint, in accordance with the observations made by the appellate court. Challenging the order of the appellate court, this appeal is filed.

If a liberal approach is made regarding the pleadings, it can be seen that the appellants-plaintiffs claimed that the disputed road is a public path way. There is absolutely nothing illegal in the order of the appellate court. So, I do not find any substantial questions of law arising for consideration in this appeal. The appeal is only to be dismissed.

In the result, the appeal is dismissed.

K.PADMANABHAN NAIR,
JUDGE

nj.